

I

98TH CONGRESS
1ST SESSION

H. R. 424

To amend the Privacy Act of 1974 and the Communications Act of 1934 to provide for the protection of telephone records, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1983

Mr. WEISS introduced the following bill; which was referred jointly to the Committees on Government Operations, Energy and Commerce, and the Judiciary

A BILL

To amend the Privacy Act of 1974 and the Communications Act of 1934 to provide for the protection of telephone records, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE

4 SECTION 1. This Act may be cited as the "Federal Pri-
5 vacy of Telephone Records Act".

6 FINDINGS AND PURPOSE

7 SEC. 2. (a) The Congress finds that—

15

1 (1) the right to privacy is a personal and funda-
2 mental right protected by the Constitution of the
3 United States;

4 (2) the records of telecommunications provide in-
5 dependent documentation of communications which,
6 before the advent of the telephone, were considered
7 uniquely private in character;

8 (3) our current legal system severely restricts
9 access to the contents of telecommunications;

10 (4) the mere fact of a communication is often as
11 revealing as the content;

12 (5) increasingly sophisticated telecommunications
13 technologies permit and encourage telecommunications
14 common carriers to keep records of the existence, date,
15 location, time, and even parties to telecommunications;
16 and

17 (6) the unprotected nature of records of the fact of
18 a telecommunication endangers the privacy of Ameri-
19 can citizens and chills the exercise of individual rights.

20 (b) The purposes of this Act are—

21 (1) to protect the privacy of telecommunications
22 records from unwarranted disclosure; and

23 (2) to limit intrusion into personal privacy even
24 where disclosure to government is deemed appropriate.

1 AMENDMENT TO TITLE 5, UNITED STATES CODE

2 SEC. 3. Section 552a of title 5, United States Code, is
3 amended by inserting after subsection (q) the following new
4 subsections:

5 “(r)(1) TELEPHONE RECORDS.—The head of each
6 agency which maintains telephone record information (as de-
7 fined by section 225(a)(6) of the Communications Act of
8 1934) shall designate an officer of supervisory rank in the
9 agency to serve as telephone record custodian and shall pro-
10 mulgate regulations as necessary to carry out the provisions
11 of this paragraph and paragraph (2). The telephone record
12 custodian shall—

13 “(A) take possession of all telephone record infor-
14 mation possessed or acquired by the agency;

15 “(B) be responsible for the use and disclosure of
16 all such information;

17 “(C) cause the preparation of any copies of the in-
18 formation to the extent required for official use pursu-
19 ant to the provisions of this paragraph or paragraph (2)
20 and regulations adopted pursuant thereto;

21 “(D) not disclose any telephone record information
22 except in accordance with paragraph (2);

23 “(E) upon the completion of—

24 “(i) the investigation for which telephone
25 record information was acquired by the agency, or

1 “(ii) a case or proceeding arising from the in-
2 vestigation,

3 return to the person who produced the record all mate-
4 rial which has not passed into the control of a court or
5 grand jury through introduction into the record of a
6 case or proceeding.

7 When any telephone record information has been produced
8 by a person under this section for use in an investigation, and
9 no case or proceeding arising therefrom has been instituted
10 within a reasonable time after completion of the examination
11 and analysis of all evidence assembled in the course of the
12 investigation, such person shall be entitled, upon written
13 demand made upon the head of the agency, to the return of
14 all telephone record information produced by the person.

15 “(2) An agency, or any officer or employee thereof, shall
16 not disclose any telephone record information (as defined by
17 section 225(a)(6) of the Communications Act of 1934) to any
18 person or make a copy of any telephone record information
19 except—

20 “(A) with the written consent of the customer (as
21 defined by section 225(a)(1) of such Act) to whom the
22 telephone record information pertains;

23 “(B) to an attorney for the United States for the
24 presentation of a case or proceeding before a court or
25 grand jury on behalf of the United States which arose

1 out of the investigation for which the telephone record
2 information was acquired, when the attorney designat-
3 ed to appear on behalf of the United States in the pro-
4 ceeding or case determines that disclosure is required,
5 but upon the conclusion of any such case or proceed-
6 ing, the attorney shall return to the custodian any tele-
7 phone record information which has not passed into the
8 record of the case or proceeding; or

9 “(C) at the written direction of the head of the
10 agency, to a Government authority of the United
11 States authorized by statute or Executive order to con-
12 duct foreign intelligence or counterintelligence activi-
13 ties solely for the purpose of conducting such activi-
14 ties.”.

15 AMENDMENT TO COMMUNICATIONS ACT OF 1934

16 SEC. 4. The Communications Act of 1934 is amended
17 by inserting after section 224 the following new section:

18 “TELEPHONE RECORDS

19 “SEC. 225. (a) For purposes of this section:

20 “(1) The term ‘customer’ means any person or
21 authorized representative of such person who is sub-
22 scribing or has subscribed to the services of a service
23 provider.

24 “(2) The term ‘Government authority’ means any
25 agency, department, bureau, or other authority of the

1 Federal Government, or of any State, commonwealth,
2 territory, or possession, or any political subdivision
3 thereof, or any officer, employee, or agent of any of
4 the foregoing.

5 “(3) The term ‘intercept’ means to acquire tele-
6 phone record information at any time from initiation to
7 completion of a telephone call, telegram, or similar
8 message, through the use of any electronic, mechani-
9 cal, or other device.

10 “(4) The term ‘service provider’ means any
11 common carrier or other person who provides telecom-
12 munications transmission services within the territory
13 of the United States, including any operator of a cable
14 television or cable radio system. Such term does not
15 include any person engaging in television or radio
16 broadcasting.

17 “(5) The term ‘telecommunication’ means any
18 telephone call or other transmission, emission, or re-
19 ception of signs, signals, writings, images, and sound
20 or intelligence of any nature by wire, radio, optical, or
21 other electromagnetic systems.

22 “(6) The term ‘telephone record information’
23 means any information, other than the contents of a
24 communication, which makes it possible to determine
25 the existence, date, time, location, or parties involved

1 in any telephone call or in any other telecommunica-
2 tion, including information recorded by means of a pen
3 register or similar device.

4 “(b)(1) No service provider or its officers, employees, or
5 agents shall disclose telephone record information or grant
6 permission for an intercept of such information, except—

7 “(A) to a Government authority as provided by
8 subsection (c); or

9 “(B) pursuant to the specific authorization of the
10 customer identified by the telephone record.

11 “(2) Nothing in this section prohibits a service provider
12 from disclosing telephone record information to its employees
13 or agents to the extent necessary as a part of its provision of
14 services.

15 “(3) Nothing in this section prohibits the disclosure of
16 any telephone record information which is not identified with,
17 or identifiable as being derived from, the telephone records of
18 a particular customer.

19 “(c) A service provider may disclose telephone record
20 information or may permit an intercept of a telecommunica-
21 tion for the purpose of obtaining telephone record informa-
22 tion—

23 “(1) pursuant to the provisions of the Foreign In-
24 telligence Surveillance Act of 1978 (50 U.S.C. 1801 et
25 seq.);

1 “(2) pursuant to a court ordered response to a
2 summons or subpoena which was issued under the re-
3 quirements of subsection (d);

4 “(3) pursuant to a court order obtained under the
5 provisions of subsection (e) and subsection (f); or

6 “(4) pursuant to the emergency provisions of sub-
7 section (g).

8 “(d)(1) A supervisory officer of a Government authority
9 designated by regulation by the head of such authority may
10 authorize or seek the issuance of an administrative summons
11 or subpoena or a judicial summons or subpoena in order to
12 obtain telephone record information from a service provider.

13 “(2) A customer, to the extent that telephone record
14 information sought under this subsection relates to his sub-
15 scribed services, shall—

16 “(A) be served with a copy of any summons or
17 subpoena issued pursuant to paragraph (1), or have a
18 copy mailed to his last known address on or before the
19 date on which the summons or subpoena is served on
20 the service provider, together with a notice of the cus-
21 tomer’s right to challenge the summons or subpoena, in
22 accordance with subparagraph (C) and subparagraph
23 (D);

1 “(B) be permitted ten days from the date of serv-
2 ice or fourteen days from the date of the mailing to
3 reply to the summons or subpena;

4 “(C) be permitted to file (without filing fee) a
5 motion to quash or otherwise limit the summons or
6 subpena—

7 “(i) in the case of a judicial subpena, in the
8 court which issued it;

9 “(ii) in the case of any other subpena or
10 summons issued by a government authority of a
11 State, in a court of competent jurisdiction; or

12 “(iii) in the case of any other summons or
13 subpena issued by a government authority of the
14 United States, in the United States district court
15 in the district where the customer resides, in the
16 district in which the summons or subpena was
17 issued, or in any other court of competent juris-
18 diction; and

19 “(D) be permitted to oppose, or seek to limit, the
20 summons or subpena on any grounds which would oth-
21 erwise be available if the customer were in possession
22 of the information.

23 “(3) A court may order disclosure of telephone record
24 information pursuant to a summons or subpena issued under
25 paragraph (1) if—

1 “(A) a customer fails to initiate a challenge to the
2 summons or subpoena within the time limits established
3 by paragraph (2)(B); or

4 “(B) the court determines, after the customer is
5 afforded an opportunity to challenge the summons or
6 subpena pursuant to paragraph (2), that—

7 “(i) there are reasonable grounds to believe
8 that the information will be relevant to an investi-
9 gation of a crime enumerated in subsection (e) or
10 to a case or proceeding arising out of such investi-
11 gation; and

12 “(ii) the Government authority has estab-
13 lished that it possesses the authority to obtain the
14 information from the custody of the customer.

15 A court may limit the scope of, or otherwise modify, any
16 summons or subpoena it orders to be enforced under subpara-
17 graph (B) as it determines would be in the interest of justice.
18 In any order issued under this subsection the court shall cite
19 this subsection as authority for the order.

20 “(e)(1) The Attorney General, an Assistant Attorney
21 General, or a designated attorney who is an officer of the
22 Department of Justice specifically authorized by regulation,
23 may authorize an application to a United States district court
24 of competent jurisdiction for an order to acquire telephone
25 record information from a service provider or to intercept

1 telephone record information when such acquisition or inter-
2 ception may provide evidence of a criminal offense under a
3 Federal law which constitutes a felony.

4 “(2) The Attorney General or chief criminal prosecutor
5 of a State may authorize an application to a State court of
6 competent jurisdiction for an order to acquire telephone
7 record information from a service provider or to intercept
8 telephone record information when the acquisition or inter-
9 ception may provide evidence of a criminal offense which in-
10 volves murder, kidnaping, robbery, extortion, forgery, brib-
11 ery, embezzlement, fraud, racketeering, a violation of this
12 subsection, or any other crime which threatens serious physi-
13 cal injury to an individual or will result in serious damage to
14 property and is punishable by imprisonment for more than
15 one year.

16 “(3) Each application pursuant to paragraph (1) and
17 paragraph (2) shall be made in writing upon oath or affirma-
18 tion to a court of competent jurisdiction. Each application
19 shall include the following information—

20 “(A) the identity of the investigative or law en-
21 forcement officer making, and the officer authorizing,
22 the application;

23 “(B) a full statement of the facts and circum-
24 stances relied upon by the applicant to justify his belief
25 that an order should be issued, including—

1 “(i) a reasonable description of the nature
2 and location of the facilities from which, or the
3 place where, the telephone record information is
4 to be intercepted or of the service provider from
5 whom the information will be obtained; and

6 “(ii) the identity of the person, if known,
7 committing the offense with respect to which tele-
8 phone record information is to be intercepted or
9 records are to be acquired;

10 “(C) a reasonable description of what other inves-
11 tigative procedures have been tried and failed, or why
12 other investigative procedures reasonably appear to be
13 unlikely to succeed if tried;

14 “(D) a statement of the period of time for which
15 an interception is likely to be required to be maintained
16 and, if the nature of the investigation is such that the
17 authorization for interception should not automatically
18 terminate when the described telephone record infor-
19 mation has been first obtained, a particular description
20 of facts establishing reasonable cause to believe that
21 additional telephone record information of the same
22 type will occur thereafter;

23 “(E) to the extent known, a full statement con-
24 cerning all previous applications for authorization to in-
25 tercept, or for approval of interceptions begun under

1 the emergency provisions of subsection (g), telephone
2 record information involving any of the same persons
3 specified in the application; and

4 “(F) where the application is for the extension of
5 an order authorizing or approving interception, a state-
6 ment setting forth the results thus far obtained from
7 the interception, or a reasonable explanation of the
8 failure to obtain such results.

9 The court hearing the application involved may require the
10 applicant to furnish additional evidence in support of an ap-
11 plication.

12 “(f)(1) Upon application pursuant to subsection (e), the
13 court may enter an ex parte order, as requested or as modi-
14 fied, authorizing or approving interception or acquisition of
15 telephone record information within the jurisdiction of the
16 court, if it determines on the basis of the facts submitted by
17 the applicant that—

18 “(A) there is reasonable cause to believe that an
19 individual is committing, has committed, or is about to
20 commit an offense enumerated in subsection (e)(1) or
21 subsection (e)(2);

22 “(B) there is reasonable cause to believe that in-
23 formation or evidence obtained through interception or
24 acquisition of telephone record information identified

14

1 with the individual will be relevant to the offense identified pursuant to subsection (e)(3)(B); and

2
3 “(C) alternative investigative procedures to obtain
4 the same information or evidence have been tried and
5 failed or reasonably appear to be unlikely to succeed if
6 tried and the information sought is not reasonably
7 available elsewhere.

8 “(2) Each order authorizing or approving the interception of any telephone record information or the acquisition of
9 any telephone record information from a service provider
10 shall specify—

11
12 “(A) the identity of the customer, if known, whose
13 telephone record information is to be intercepted, or
14 the identity of the customer whose telephone record information is to be acquired from a service provider;

15
16 “(B) the nature and location of the facilities as to
17 which, or the place where, authority to intercept or to
18 acquire records is granted;

19 “(C) a statement of the offense to which they
20 relate;

21 “(D) the identity of the agency authorized to intercept or to acquire the telephone record information
22 from the service provider; and
23

24 “(E) the period of time during which interception
25 is authorized, including a statement as to whether or

15

1 not the interception shall automatically terminate when
2 the described telephone record information has been
3 first obtained.

4 “(3) No order may authorize or approve the interception
5 of any telephone record information for any period longer
6 than is necessary to achieve the objective of the authoriza-
7 tion, nor in any event longer than thirty days.

8 “(4) Extensions of an order authorizing interceptions
9 may be granted, but only upon application for an extension
10 made in accordance with subsection (e)(3) and with the court
11 making the findings required by this subsection. The period of
12 extension shall be no longer than the authorizing judge deems
13 necessary to achieve the purposes for which it was granted
14 and in no event for longer than thirty days.

15 “(5) Every order authorizing interception and extension
16 shall contain a provision that the authorization to intercept
17 shall be executed as soon as practicable, shall be conducted
18 in such a way as to minimize the interception of telephone
19 record information not subject to interception under the order
20 or extension, and shall terminate upon attainment of the au-
21 thorized objective, or in any event in thirty days.

22 “(6) Whenever an order authorizing interception for a
23 period in excess of forty-eight hours is entered, the order may
24 require reports to be made to the court which issued the
25 order showing what progress has been made toward achieve-

1 ment of the authorized objective and the need for continued
2 interception. Such reports shall be made at such reasonable
3 intervals as the court may require.

4 “(7) Applications made and orders granted under this
5 section shall be sealed by the court. Custody of the applica-
6 tions and orders shall be wherever the court directs. The ap-
7 plications and orders shall be disclosed only upon a showing
8 of good cause before a court of competent jurisdiction and
9 shall not be destroyed except on order of the issuing or deny-
10 ing court, and in any event shall be kept for ten years.

11 “(g)(1) Notwithstanding any other provision of this sec-
12 tion, any investigative or law enforcement officer, specially
13 designated in regulation by the Attorney General or by the
14 principal prosecuting attorney of any State and acting pursu-
15 ant to a statute of such State, who reasonably determines
16 that—

17 “(A) an emergency situation exists with respect to
18 criminal activities threatening to life which requires
19 that telephone record information be intercepted or ac-
20 quired before an order authorizing such interception or
21 acquisition can with due diligence be obtained; and

22 “(B) there are grounds upon which an order could
23 be entered to authorize the interception or acquisition;
24 may intercept or acquire the telephone record information.

1 “(2) An application for an order approving an intercept-
2 tion or acquisition pursuant to paragraph (1) shall be made in
3 accordance with this subsection within forty-eight hours after
4 the acquisition or after the interception occurs, or begins to
5 occur. In the absence of an order, an interception shall imme-
6 diately terminate when the information sought is obtained or
7 when the application for the order is denied, whichever is
8 earlier. In the event the application for the order is not ap-
9 proved, an inventory shall be served on the person named in
10 the application as provided for in subsection (h).

11 “(3) Notwithstanding any other provision of this section,
12 a special agent of the Secret Service may, for the purpose of
13 carrying out the protective functions of the Secret Service
14 under section 3056 of title 18, United States Code (relating
15 to Secret Service functions), under section 202 of title 3 of
16 such Code (relating to the Executive Protective Service), or
17 under the Act of June 6, 1968 (18 U.S.C. 3056, note; 82
18 Stat. 170; relating to Secret Service protection of Presiden-
19 tial candidates), acquire or intercept telephone record infor-
20 mation, except that—

21 “(A) the Director of the Secret Service shall au-
22 thorize the acquisition or interception after determining
23 that there is reason to believe that acquisition or inter-
24 ception is necessary in order to carry out the protec-
25 tive functions of the Secret Service;

1 “(B) an interception shall immediately terminate
2 when the needed information is obtained;

3 “(C) the officer authorizing the acquisition or in-
4 terception shall certify in writing within forty-eight
5 hours to a United States district court of competent ju-
6 risdiction that—

7 “(i) acquisition or interception of the tele-
8 phone record information of a designated customer
9 occurred or is occurring; and

10 “(ii) there was reason to believe that acquisi-
11 tion or interception was necessary in order to
12 carry out the protective functions of the Secret
13 Service; and

14 “(D) if, after receiving the certification required
15 by subparagraph (C), the court finds that the require-
16 ments of subparagraph (A) and subparagraph (B) were
17 not met, the court shall order termination of the acqui-
18 sition or interception, if not yet terminated, and an in-
19 ventory shall be served on the customer whose tele-
20 phone record information was acquired or intercepted
21 as provided for in subsection (h).

22 “(h)(1) Within a reasonable time, but not later than one
23 hundred and twenty days, after the denial of an application
24 for an order under subsection (f) or the termination of the
25 period of an order or an extension thereof, the issuing or

1 denying court shall cause to be served on the persons named
2 in the order or the application, and such other parties to in-
3 tercepted or acquired telephone record information as the
4 court may determine in its discretion are in the interest of
5 justice, an inventory which shall include notice of—

6 “(A) the fact of the entry of the order or the ap-
7 plication;

8 “(B) the date of the entry, or the denial, of the
9 application;

10 “(C) the period of authorized, approved, or disap-
11 proved interception, if telephone record information
12 was intercepted; and

13 “(D) the fact that during such period telephone
14 record information was or was not intercepted.

15 “(2) The court may in its discretion make available to
16 the customer whose telephone record information was inter-
17 cepted or acquired or his counsel for inspection portions of
18 the telephone record information, the application, and the
19 order.

20 “(3) Upon request by the applicant for an order, the
21 court may grant a delay in service of the inventory or any
22 other notification pursuant to paragraph (1), which delay
23 shall not exceed one hundred and eighty days following the
24 conclusion of the interception, if the court finds, upon the

1 showing of the applicant, that there is reasonable cause to
2 believe that service of the inventory would—

3 “(A) endanger the life or physical safety of any
4 person;

5 “(B) result in flight from prosecution;

6 “(C) result in destruction of, or tampering with,
7 evidence; or

8 “(D) result in intimidation of potential witnesses.

9 If the court so finds, it shall enter an ex parte order granting
10 the requested delay. Additional delays of not more than
11 ninety days may be granted by the court upon application,
12 but only in accordance with this paragraph. Upon expiration
13 of the period of delay, the inventory shall be served immedi-
14 ately.

15 “(i) Any violation of the provisions of subsection (d), (e),
16 (f), (g), or (h) may be punished as contempt of the court issu-
17 ing or denying an order.

18 “(j) Whoever, other than a party to the telecommunica-
19 tion identified by telephone record information, in violation of
20 this subsection intentionally discloses telephone record infor-
21 mation or intercepts telephone record information shall be
22 fined not more than \$100,000 or imprisoned not more than
23 five years, or both.

24 “(k)(1) A person aggrieved by a violation of this section
25 in respect to telephone record information which identifies a

1 telecommunication to which he was a party may maintain a
2 civil action for actual damages and for equitable relief
3 against—

4 “(A) the United States, an authority of a State
5 which has waived its sovereign immunity under the
6 Constitution to a claim for damages resulting from a
7 violation of this section, or any other governmental
8 unit, each of which shall be liable for violations of this
9 section by their officers or employees while the officers
10 or employees are acting within the scope of their office
11 or employment; and

12 “(B) an officer or employee of a State who has
13 violated this section, if the State has not waived its
14 sovereign immunity as provided in subparagraph (A),
15 or an officer or employee of the United States, a State,
16 or any other governmental unit who has violated this
17 section while acting outside the scope of his office or
18 employment; and

19 “(C) any other violator.

20 The district courts of the United States shall have jurisdiction
21 in the matters under the provisions of this subsection.

22 “(2) Any person entitled to recovery under this subsec-
23 tion shall receive not less than \$10,000.

24 “(3) In any suit brought under this subsection in which
25 the complainant has substantially prevailed, the court may, in

1 addition to any actual damages or equitable relief, award
2 such punitive damages as may be warranted and may assess
3 against the defendant reasonable attorney fees and other
4 costs of litigation reasonably incurred.

5 “(l) Whenever telephone record information has been
6 disclosed, intercepted, or acquired in violation of this section,
7 no part of such information and no evidence derived there-
8 from may be received in evidence in any trial, hearing, or
9 other proceeding in or before any court, grand jury, depart-
10 ment, officer, agency, regulatory body, legislative committee,
11 or other authority of the United States, a State, or a political
12 subdivision thereof, except to the extent that the telephone
13 record information is used in the prosecution of a violation of
14 this section or as evidence to impeach perjured testimony.

15 “(m) A good faith reliance on a court order issued pur-
16 suant to subsection (d) or subsection (f), or on the provisions
17 of the Foreign Intelligence Surveillance Act of 1978 (50
18 U.S.C. 1801 et seq.), where applicable, or on the provisions
19 of subsection (g), shall constitute a complete defense to any
20 civil action for damages brought under this section.”.

○